

**Filed 4/25/17 by Clerk of Supreme Court**  
**IN THE SUPREME COURT**  
**STATE OF NORTH DAKOTA**

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2017 ND 111

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Tilmer Paul Everett,

Petitioner and Appellant

v.

State of North Dakota,

Respondent and Appellee

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No. 20160282

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Appeal from the District Court of Burleigh County, South Central Judicial District, the Honorable Bruce A. Romanick, Judge.

DISMISSED.

Opinion of the Court by Crothers, Justice.

Tilmer Paul Everett, P.O. Box 5521, Bismarck, ND 58506, petitioner and appellant; submitted on brief.

Karlei K. Neufeld, Burleigh County State's Attorney's Office, Burleigh County Courthouse, 514 E. Thayer Ave., Bismarck ND 58501, for respondent and appellee; submitted on brief.

**Everett v. State**

**No. 20160282**

**Crothers, Justice.**

[¶1] Tilmer Everett appeals from a district court order denying his motion to file newly discovered evidence and denying his application for post-conviction relief. We dismiss the appeal.

[¶2] In 2007 a jury found Everett guilty of gross sexual imposition. The conviction was affirmed in State v. Everett, 2008 ND 126, 756 N.W.2d 344. Since this Court affirmed his conviction Everett has unsuccessfully filed numerous applications for post-conviction relief. See Everett v. State, 2016 ND 78, 877 N.W.2d 796; Everett v. State, 2015 ND 162, 870 N.W.2d 26; Everett v. State, 2012 ND 189, 821 N.W.2d 385; Everett v. State, 2011 ND 221, 806 N.W.2d 438; Everett v. State, 2010 ND 226, 795 N.W.2d 37; Everett v. State, 2010 ND 4, 789 N.W.2d 282; Everett v. State, 2008 ND 199, 757 N.W.2d 530; see also State v. Everett, 2014 ND 191, 858 N.W.2d 652.

[¶3] In August 2015 the district court entered an order barring Everett from future filings without the court's permission. This Court affirmed the order, holding it does not violate Everett's due process rights. Everett v. State, 2016 ND 78, ¶ 23, 877 N.W.2d 796.

[¶4] Similar to his filings here, in February 2016 Everett filed what he referred to as a "motion requesting permission to file newly discovered evidence" and a supporting application for post-conviction relief. In March 2016 the district court entered an order denying his motion and dismissing his case. Everett appealed and we dismissed his appeal, holding the district court's order denying Everett leave of court to allow him further filings was not an appealable order. Everett v. State, 2017 ND 93, ¶ 14. This Court concluded the district court's order denying Everett's motion seeking permission for further filings was similar to a dismissal without prejudice and Everett failed to show the order affects a substantial right under either N.D.C.C. §§ 28-27-02 or 29-28-06. Id. at ¶ 13. We explained that the order Everett attempted to appeal "merely denies him the approval required under the prior injunctive order." Id.

[¶5] In May 2016 Everett filed the motion underlying this case, which he referred to as a "motion requesting permission to file newly discovered evidence" with another application for post-conviction relief. In June 2016 the district court entered an order

denying his motion to file newly discovered evidence and denying his application. On appeal Everett argues the district court violated his due process rights when it did not correctly file his motion and application and the State violated his due process rights by not responding to his motion and application. Everett contends the district court erred in denying his motion and application based on newly discovered evidence. Everett also argues the State wrongfully suppressed evidence and provided false testimony during the oral argument regarding Everett v. State, 2010 ND 226, 795 N.W.2d 37. We conclude the district court's order denying Everett's motion to file newly discovered evidence is not appealable. We dismiss the appeal. See Everett v. State, 2017 ND 93, ¶ 14 (holding district court order denying leave of court to allow Everett further filings was not an appealable order).

[¶6] Daniel J. Crothers  
Lisa Fair McEvers  
Carol Ronning Kapsner  
Jerod E. Tufte  
Gerald W. VandeWalle, C.J.